

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-CV-509-BO

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Plaintiff,

v.

CEDAR PEAKS ENTERPRISES, INC.,
THREE PEAKS EQUIPMENT, LLC,
DAVID K. RIFENBURG, MICHELLE A.
RIFENBURG, BRIAN G. BIRDSALL,
and KELLY H. BIRDSALL,

Defendants.

ORDER

This cause comes before the Court on the parties' joint motions for a second extension of time to file an answer or responsive pleading [DE 28] and a second extension of the temporary restraining order [DE 29]. For good cause shown, both motions are GRANTED.

Defendants shall have up to and until April 15, 2019 to answer or otherwise respond to plaintiff's complaint. Upon the consent of the parties, the temporary restraining order is hereby extended until April 15, 2019. Accordingly, it is hereby

ORDERED that the Indemnitors are enjoined and restrained from diverting or misappropriating any funds due or paid under any contract bonded by Travelers on behalf of Cedar Peaks Enterprises, Inc.; it is further

ORDERED that the Indemnitors are enjoined and restrained from removing any property, equipment or materials from the Greater Asheville Airport Project, unless consented to by Travelers or directed to do so by Greater Asheville Airport Authority; it is further

ORDERED that the Indemnitors shall immediately direct and remit all funds in their possession, custody and/or control, due or to be paid under any contract bonded by Travelers on behalf of Cedar Peaks Enterprises, Inc. to Travelers, for deposit into a trust account maintained and administered by Travelers (the "Trust Account"), and that Travelers shall provide the Indemnitors with an accounting of all funds in said Trust Account upon the reasonable request of the Indemnitors; it is further

ORDERED that the Indemnitors shall direct all obligees on bonds issued by Travelers to remit all future payments due under any contract bonded by Travelers on behalf of Cedar Peaks Enterprises, Inc. to Travelers, for deposit into the Trust Account;

ORDERED that the Indemnitors will cooperate with Travelers and Paragon Bank in good faith regarding the disposition, liquidation and/or retention of the equipment described on Exhibit 1-A attached hereto and incorporated herein by reference, as has been and may be agreed upon by the parties;

ORDERED that the Indemnitors shall take no action which would impede Travelers's ability to complete the Greater Asheville Airport Project; it is further

ORDERED that Cedar Peaks Enterprises, Inc. and Three Peaks Equipment, LLC shall provide Travelers access to their books and records with respect to any project bonded by Travelers upon reasonable request by Travelers and reasonable advance notice; it is further

ORDERED that the Indemnitors reserve the right to seek termination of this Third Extension of Temporary Restraining Order if the Indemnitors are not granted until April 15, 2019 to file an answer or response to Travelers's Complaint for Indemnity and Equitable Relief; and it is further

ORDERED that the bond of \$1,000.00 posted by Travelers on November 2, 2018 [DE 11] pursuant to Rule 65(c) of the Federal Rules of Civil Procedure shall remain in effect without prejudice to the right of the Indemnitors to request that said bond be increased; it is further

ORDERED that the TRO, as may be modified by this Third Extended Temporary Restraining Order, shall remain in full force and effect until April 15, 2019; provided, however, that nothing in this Temporary Restraining Order shall bar Travelers from immediately seeking permanent relief from the Court, and nothing in this Third Extended Temporary Restraining Order shall preclude the Indemnitors from defending against any request for permanent relief from the Court.

SO ORDERED, this 12 day of February, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE